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No. 07- 1071222

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

SUNG YUEN WONG,

*Petitioner,*

*v.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

*Respondent.*

EILEEN WONG, STANLEY WONG, LISA MARIE WONG, ERIC WONG and HELEN WONG,

*Real Parties in Interest.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT, DIVISION SEVEN

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Whether procedural due process requires notice, prior to the appointment of a Probate Panel Attorney to represent a prospective Temporary Conservatee without a competent showing of exigent circumstances.

2. Whether procedural due process requires a trial court, in appointing a Temporary Conservator, to use substantially more than a preponderance standard based upon incompetent hearsay without a showing of exigent circumstances, when significant liberty interests will be curtailed.

3. Whether procedural due process requires a finding, on a clear and convincing evidence standard, that a spouse of a prospective elderly disabled Temporary Conservatee, willing to care for his elderly disabled spouse, lacks capacity before someone other than the spouse can be appointed as the Temporary Conservator of an elderly disabled person.

4. Whether procedural due process requires the standard of proof for the removal of a Temporary Conservatee from her residence to a board and care facility where no medical treatment is offered or available at the board and care facility by a clear and convincing evidence standard.

5. Whether procedural due process and equal protection of the law requires a trial by jury for the non Conservatee spouse as a de facto Conservatee.

6. Whether a judicial departure from procedural due process supports a premise that the California Probate Code Sections were misused to create a Temporary Conservatorship which resulted in a cruel confinement against a Temporary Conservatee's will.

7. Whether the California Second District Court of Appeal and the Supreme Court of California so far departed from the ordinary course of judicial decision making, or sanctioned such departure by the lower court as to call for the exercise of the supervisory power of the United States Supreme Court.

8. Does the penumbra doctrine under the Constitution include the right to the pursuit of happiness.

## LIST OF PARTIES

The parties in the within action are:

1. Petitioner: SUNG YUEN WONG; and

2. Respondents:

(a) SUPREME COURT OF THE STATE OF CALIFORNIA

(b) CALIFORNIA COURT OF APPEAL, SECOND DISTRICT

(c) SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, NORTH EAST DIVISION

(d) EILEEN WONG

(e) HOWARD MYERS

(f) JEFFREY SEIGEL

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## CITATIONS OF OFFICIAL JUDGMENTS

The Official Judgments in the action are:

The Opinion and Ruling of the California Court of Appeal, Second District, Case No. B202262 as reflected in the decision on September 25, 2007.

The opinion and ruling of the Supreme Court of California, Case No. S157120 as reflected in the decision on December 12, 2007

The Opinion and Ruling of the California Court of Appeal, Second District, Case No. B203477, as reflected in the decision on December 5, 2007.

The opinion and ruling of the Supreme Court of California, Case No. S158944 as reflected in the decision on January 16, 2008.

## STATEMENT OF JURISDICTION

### A. Date of Judgment To Be Reviewed

Pursuant to a Petition for Conservatorship of the person and estate of Petitioner's wife, on May 31, 2007, the trial court appointed Petitioner's daughter as Temporary Conservator and ordered Temporary Conservatee, Helen Wong to be removed from her home where she lived for 42 years to a board and care facility which offers no medical treatment and where none is available.

*First*, Petitioner timely sought extraordinary writ relief from the trial court's order appointing a Temporary Conservator over his wife other than the priority of appointing him under California Probate Code § 1812 and the court's removal orders. The California Court of Appeal, Second District denied Petitioner's timely filed Writ in Case No. B202262. (Appendix A) On December 12, 2007, Petitioner's timely filed Petition for Review was denied by the California Supreme Court in Case No. S157120. (Appendix C) The denial triggered the 90-day period to file a Petition for Writ of Certiorari. (28 U.S.C. § 2101(c); Rule 13)

*Second*, the trial court then denied Petitioner's (a defacto conservatee) motion for a jury trial. Petitioner timely sought extraordinary writ relief which was denied by the California Court of Appeal, Second District in Case No. B203477. (Appendix B) On January 16, 2008, Petitioner's timely filed Petition for Review was denied by the California Supreme Court in Case No. S158944. (Appendix D)

**B. Date Respecting Rehearing**

As the Petitions for Review were denied, there was no hearing thus, no rehearing.

**C. Rule 12.5 Appears Inapplicable**

Petitioner has no knowledge of any cross appeal thus Rule 12.5 appears inapplicable.

**D. Jurisdiction of Supreme Court**

The United States Supreme Court has jurisdiction over this Petition for Writ of Certiorari under, 28 U.S.C. § 1257(a), 28 U.S.C. § 2101(c) and U.S. Sup. Ct. Rule 10(b).

**E. Extension of Time**

On February 29, 2008, Petitioner filed an Application with Justice Kennedy seeking an extension of time to file his Petition for Writ of Certiorari, Application No. 07A739 which was granted on March 6, 2008. Petitioner has until March 21, 2008 to file his Petition for Certiorari.

**F. Notification By Rule 29.4(b)&(c)**

The statute 28 U.S.C. § 2403(b) may apply respecting the constitutionality of a state statute. Petitioner served his Petitions for Review to the California Supreme Court on the Office of the Attorney General of California giving them Notice that the constitutionality of a state statute was called into question during the litigation. It is unknown if, pursuant to 24 U.S.C. § 2403(b), the lower court certified to the Attorney General of California that the constitutionality of a state statute was being called into question.

## CONSTITUTIONAL PROVISIONS INVOLVED

The within action addressed Article I, Section 1, 7 and 16 of the California Constitution and the 5th, 8th and 14th Amendments to the United States Constitution.

## STATEMENT OF THE CASE

### A. Review of Constitutional Questions

Whether procedural due process requires notice before appointing a PVP Counsel for a Prospective Conservatee and a clear and convincing standard from competent evidence, rather than a preponderance standard based on hearsay, before appointing a Temporary Conservator and removing a Temporary Conservatee from her home to a board and care facility in which no medical treatment is abailable.

### B. Jurisdiction of Lower Courts

Jurisdiction in the Superior Court of California, County of Los Angeles was Probate Code Section 1800, et seq. Jurisdiction for the Writs in the California Court of Appeals was Article VI, Section 10 of the California Constitution and Article VI, Section 12(b)(c) for the California Supreme Court Petitions for Review.

### C. Summary of Petitioner's Complaint

Petitioner's "*liberty interest*" to have a legitimate relationship with his spouse was subject to severe constitutional violations. Petitioner and his Temporary Conservatee spouse were denied due process under Article I, Section 1, 7 and 16 of the California Constitution and the 5th and 14th Amendments of the United States Constitution. Petitioner's spouse of 58 years suffered a stroke on December 17, 2006. Despite Petitioner's capacity to provide care for his spouse, on May 31, 2007, the trial court appointed Petitioner's

daughter as Temporary Conservator and removed his spouse from their home in which they lived for 42 years based only upon incompetent hearsay. Timely oral objection was made to such hearsay. Since May 31, 2007, despite the competent testimony from a physician who treated Petitioner and his spouse for the prior four years and an examining neurologist, that Petitioner had the capacity to be the primary care giver for his disabled spouse, Petitioner's spouse has been unlawfully, involuntarily, confined to a board and care facility where there was and is no medical treatment for her stroke condition. Petitioner's spouse is housed in near isolation, monitored visitation was ordered, there was no plan presented to relocate Petitioner's wife back to their home and Petitioner was then denied a jury trial,

These issues are widespread as thousands of elderly disabled Californian's as well as the citizens of the several states are abused when, through loose standards in the probate code, *under color of law*, they become victims of a Petition for Conservatorship predicated on their alleged best interest. In reality, such Conservatorship isolates them from their spouse and home where they loose their privacy and liberty by reason of old age, disability or both in an effort by the Conservatorship Petitioner to gain access to their estates prior to their natural demise. Once forced into the Conservatorship system, through further loose standards in the Probate Code, the Conservatees and their spouse, are denied a jury trial and find it nearly impossible to free themselves from the indignity cast upon them as elderly, unwilling participants. Such Conservatorships are legalized kidnapping and trample their rights secured by Article I, Sections I, 7 and 16 of the California Constitution and the 5th, 8th and 14th Amendments to the United States Constitution.

## D. History of Action

Petitioner is 84. There is no declaration that he lacks capacity or does not possess his faculties. Petitioner has the memory of one who succeeded in a long career and still works in computer engineering from his doctorate degree and has sufficient cognitive abilities to "*care*" for his spouse's needs.

Helen Wong, age 80, suffered a stroke on December 17, 2006. She is paralyzed in her upper right extremity and cannot speak.

Petitioner and Helen Wong communicate through body gestures and nuances in which a husband and wife of 58 years have grown accustomed.

Helen Wong was treated for her stroke at Rehabilitation facilities for four months. During this time, Petitioner requested and received training for transporting Helen Wong for her needs: to and from a wheel chair to the bed, toilet, bath and automobile. On or about April 18, 2007, Helen Wong was released to Petitioner's "*care*" which Petitioner provided at their residence in Tarzana, CA where they lived for the prior 42 years.

The Wong residence is not a picture perfect story book magazine cover of house beautiful. Nevertheless, the Wong's have enjoyed their home for the prior 42 years which contains their memorabilia they collected over their entire lives. Their great variety of books and odds and ends give them a great amount of comfort and emotional stability as they reflect and reminisce about

the prior decades they spent together. Their home is not a fire trap as commented by Captain Egizi of Fire Company No. 93 called for inspection by Petitioner. The house is equipped with a smoke detector, air conditioning units, and there is sufficient space for ingress and egress in a wheel chair.

Eileen Wong lacks patience with Petitioner and voices aggressive, hostility toward her father. On May 7, 2007, Eileen Wong signed a Petition for Conservatorship over the person and estate of Helen Wong and presented an *Ex Parte* Petition for Temporary Conservatorship declaring her dad, Petitioner, was too old and frail to care for his spouse Helen Wong.[1]

---

1. The *Ex Parte* Petition declared:

> Mrs. Wong suffered a stroke, is paralyzed on her right side, and cannot speak. She has diabetes and high blood pressure. She is dependant on others for all of her needs of daily living.
>
> Mrs. Wong is presently "being cared for" by her husband, who is also elderly, has a failing memory, and suffers from seizures. Mr. Wong does not understand the hygiene and diabetic management care that his wife requires, however, he refuses to have a care-giver in the residence.
>
> As a result, Adult Protective services has been informed that there is a possibility that Mrs. Wong is being neglected. On at least one occasion, Mr. Wong has "dropped" Mrs. Wong and the paramedics were called to assist them.
>
> Petitioner understands that her father is not able to properly care fo her mother and knows it is time to take action to work with her parents to provide the proper care for her mother and to ensure that APS does not get involved.

Thereafter, from May 9, 2007 through the present, the lower court orders subjected Petitioner and his spouse, Helen Wong, to serious and continuing violations of their "*liberty interests*," due process rights guaranteed by Article 1 Section 7 and 16 of the California Constitution and the 5th and 14th amendment of the United States Constitution. (*Goldberg v. Kelly* 397 U.S. 254, 90 S.Ct. 101, 25 L.Ed.2d 287 (1970)).[2]

### 1. PVP Appointment Violated Due Process

On May 9, 2007, the Honorable Michael R. Hoff, without a hearing and in secret, appointed Howard Meyers, Esq. PVP Counsel for Helen Wong without a court investigators report or inquiry as to whether she was represented, wanted some other attorney or whether the hearsay allegations of Eileen Wong had any veracity. While California's Probate Code §§ 1470 and 1471 allows for attorney appointments, in a Petition for a Temporary Conservatorship, a report from a Court

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2. The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' ... and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. Accordingly ... consideration of what procedures of due process may require under a given set of circumstances must begin with a determination of the precise nature of the government function involved as well as the private interest that has been affected by government action.

*Goldberg v. Kelly*, 397 U.S. 254, 262-263.

investigator under Probate Code § 2250.6(a)(2) should be required before a PVP Counsel appointment under Probate Code § 2250.6(c). There was no exigent circumstances or emergency cited in the *Ex Parte* Petition to warrant the appointment of PVP Counsel without inquiry or Notice to Petitioner or Helen Wong. The hearing on the *Ex Parte* Petition did not occur until three weeks later, on May 31, 2007, at a time when there was still no report presented from a Court Investigator or PVP Counsel. Refusing to abide by the Probate Code §§ 2250.6(a)(2) and 2250.6(c) violated Petitioner's and Helen Wong's "*due process*" rights from the inception of suit. The continuing result of this initial judicial failure of basic notice and opportunity to be heard, was to permanently deprive a legitimate husband all that his 58 year marriage implies. (*Armstrong v. Manzo*, 380 U.S. 545, 549, 85 S. Ct. 1187, 14 L. Ed. 2d 62)[3] The constitutional infirmity was not cured by the later hearings subsequently afforded Petitioner as he would not have been put to the burdens to show his capacity to "*care*" for his spouse. (*Armstrong v. Manzo*, 380 U.S. at 551).

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3. An elemental and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections . . . But as to the basic requirement of notice itself, there can be no doubt, where, as is here, the result of the judicial proceedings was permanently to derive a legitimate parent of al that parenthood implies.

*Armstrong v. Manzo*, 380 U.S. 545, 549.

## 2. The Removal Proceedings

On May 16, 2007, John McClintick, M.D. signed a capacity declaration stating Helen Wong lacked capacity to give informed consent to medical treatment, but which did not declare she needed to be relocated from her residence to a board and care facility.

On May 24, 2007, unbeknownst to Petitioner until about early July, 2007, real parties in Interest, Stanley Wong, Eric Wong and Lisa Marie Wong, nominated Eileen Wong to act as Conservator of Helen Wong.

On May 31, 2007, Petitioner filed Objections to the Petition for Appointment of Conservator claiming his and the proposed conservatee, Helen Wong's civil rights were violated. Petitioner contends Eileen Wong seeks access to the family estate prior to the natural demise of her parents.

During the May 31, 2007 hearing on the Petition for Appointment of a Temporary Conservatorship of Helen Wong, Petitioner argued his spouse was being forcibly removed, his and his spouses civil rights were being violated and his spouse Helen Wong had the right to choose her own attorney which was being denied.

During the hearing, Helen Wong exhibited pain in her right leg and the court bailiff summoned paramedics, ignoring Petitioner's plea that it was recurring pain that usually goes away by its own accord. The court decided Helen Wong had to be escorted to the hospital, stating,

> Here is something. I'm going to defer and leave it to the judgment of the trained

> paramedics. If they feel she needs to go to the hospital, then she needs to go to the hospital, and I won't stand in the way. She needs to be taken to the hospital if they believe that.

During the hearing, it is apparent that a decision to remove Helen Wong from her residence had already been made by the judicial officer when Lisa MacCarley, attorney for Eileen Wong argued they "would be more than willing to return Mrs. Wong to the residence at a future date if Mr. Wong agrees with the "*care*" giving plan outlined by the Kaiser Doctors and has the house cleaned and rehabilitated so that it is safe and appropriate for Mrs. Wong to be there." A prior decision without a hearing would have eviscerated the "*due process*" rights of both Petitioner and Helen Wong. (*Armstrong v. Manzo, supra*).

PVP Counsel argued the social workers and the doctors say Helen Wong needs "*care*" 24/7 and the only way to do that is to have her placed in this board-and-care facility as the home is extremely cluttered, little room to move her wheel chair around, it was not filthy, but it certainly isn't clean and it needs somebody to make it clean and remove the clutter. PVP Counsel mislead the court by not explaining that the 24/7 care Helen Wong needed was not exclusive of Petitioner.

Although Petitioner's attorney argued there was no "*evidence*" other than Eileen Wong's incompetent hearsay, Dr. McClintick capacity declaration which itself was hearsay at that time, and Helen Wong's temporary physical problems requiring slight medical attention, the court appointed Eileen Wong as Temporary Conservator

of Helen Wong and ordered the Temporary Conservator is authorized to relocate the Conservatee to Flair Manor Board & Care in Woodland Hills CA. The appointment and civil confinement without substantial evidence violated due process. (*Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); *Addington v. Texas*, 441 U.S. 418, 426, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979)).

Medical care is not available at Flair Manor and it has no physician or registered nurse or registered nurse assistant on staff. If Helen Wong requires medical care, Flair Manner will call 911. Such civil confinement violates due process and liberty interests. *(O'Connor v. Donaldson*, 422 U.S. 563, 95 S. Ct. 2486, 45 L. Ed. 2d 396 (1975)).

### 3. Removal Order Violated Due Process

Petitioner's "*due process*" rights were further violated as the court did not consider the priority of appointing a spouse under Probate Code § 1812 prior to appointing any other relative or professional conservator and by violating the standards for removal.

Conservatorship proceedings are the subject of numerous published cases under California's Welfare & Institutions Code ("*Wel. & Inst.*") and California's Probate Code. Removing a Temporary Conservatee from their personal residence during a Temporary Conservatorship and maintaining such removal during the pendency of the proceedings despite the testimony of the treating physician to the contrary is, however, not clear.

Under the California *Lanterman-Petris-Short* Act ("LPS"), Conservatorships are imposed against those determined to be "*gravely disabled*" (*Wel. & Inst.* 5350, *et seq.*) under a "*clear and convincing*" standard. When an LPS Conservator is appointed as a result of a person being unable to provide for their basic personal needs for food, clothing and shelter (*Wel. & Inst.* 5008(h)(1)(A)) the Conservator, who can only be appointed under the priorities of PC 1812, when ordered by the court after hearing, shall place the Conservatee in the least restrictive alternative placement facility other than their residence. (*Wel. & Inst.* 5358(a)(1)(A)&(B)) Nevertheless, the "definition of the phrase "*gravely disabled*" as a condition in which a person is unable to provide for his basic personal needs was intended to encompass a consideration of whether the person could provide for his needs with or without the assistance of willing and responsible family members." (*Conservatorship of Early* (1983) 35 Cal. 3d. 244) If there is a responsible family member willing to render assistance, an LPS conservatorship should not be appointed absent a finding that the willing family member is incompetent or irresponsible. (*Wel. & Inst.* 5350(e)).

California's Probate Code provides other means for appointing a Conservatorship over a person.

Probate Code § 2356.5 does authorize a Probate Conservator to place a person in a "*care*" facility which specializes in the treatment of those who suffer from "*dementia*" if certain requirements are met (PC § 2356.5(b)) under a "*clear and convincing*" standard. When the treating physician of persons

suffering "*dementia*" testifies that the individual may obtain the same "*care*" at home, however, the requirements are not met. (Probate Code § 2356.5(b)(3))

Probate Code § 1801(a) provides another alternative for appointment of a Conservatorship for those unable to provide properly for their personal needs for physical health, food, clothing and shelter, under a "*clear and convincing*" standard. (PC § 1801(e))

Probate Code § 1880, *et seq.* provides yet another vehicle for a Conservatorship for those who lack capacity to give informed consent to medical treatment. The standard should be "*clear and convincing.*"

Nevertheless, a conflict has emerged regarding the "*standards*" applicable for "***removal***" of a Conservatee in LPS proceedings and in each of these Probate Code sections and with respect to a "*Temporary Conservatorship*" and the reliance on incompetent hearsay and an opinion of a treating physician.

Removal and appointment of a Temporary Conservator in this case did not occur because Helen Wong was "*gravely disabled*" in the meaning of an LPS Conservatorship or because she was suffering "*dementia*" in the meaning of a Probate Code § 2356.5(b) Conservatorship or because she could not provide for her food, clothing and shelter in the meaning of a Probate Code 1801, *et seq.* proceeding. If so, a "***clear and convincing***" standard was required for "***removal***" which was not met by the incompetent hearsay of Eileen Wong or the hearsay capacity declaration.

The proceedings arose under Probate Code §§ 811 and 1880: a Temporary Conservator was appointed under Probate Code § 2250.2 where there are no express "*standards*" for the appointment under Probate Code § 2250.4 or the removal under Probate Code § 2253 or § 2254. In view of the "*liberty interests*" involved in appointing a Temporary Conservator under Probate Code §§ 2250.2 and 2250.4 and removing a Temporary Conservatee from their home under Probate Code §§ 2253 or 2254, these statutes are ***vague*** as they fail to provide adequate evidentiary standards for appointment and removal, that is, whether preponderance or clear and convincing evidence is required. The lack of evidentiary standards rendered the statutes vague, violating due process. (*Katz v. S.Ct.* (1977) 73 Cal. App. 3d. 952, 969-970, citing *Grayned v. City of Rockford*, 408 U.S. 104, 108-114, 92 S. Ct. 2294, 33 L. Ed. 2d 222)

Nevertheless, Helen Wong did exhibit symptoms of being "*gravely disabled*" or suffering "*dementia.*" The stroke did render Helen Wong unable to give informed consent to medical treatment. While Helen Wong could not, herself, individually, provide for her personal needs of food, clothing and shelter (Probate Code § 1801(a)) and lacked capacity to give informed consent to medical treatment (Probate Code §§ 811 & 1880) there was no specific finding that Petitioner, her elderly husband could not provide for her personal needs or provide consent for her medical treatment. If a person is incompetent or otherwise unable to give informed consent and has no conservator, medical treatment may proceed with the consent of the person's spouse. (*Cobbs v. Grant* (1972), 8 Cal. 3d 229; Health & Safety Code § 1418.8)) Rather than appointing Petitioner as Temporary Conservator

under the priority of Probate Code § 1812(b)(1), the Court appointed an adult child of an elderly disabled stroke victim as the Temporary Conservator of her mother and ordered the Temporary Conservatee be relocated to a residential "*care*" facility in which she is not receiving medical treatment for her stoke related illness because of a capacity declaration of her treating physician stated she lacked capacity to give informed consent to any form of medical treatment. (PC §§ 811, 1880-1881).

An LPS Conservatorship for those "*gravely disabled*" and a Probate Code § 2356.5 Conservatorship for those with "*dementia*" require the supporting testimony of a treating physician that *removal* is required before relocating the conservatee to a facility other than their home under a "*clear and convincing*" standard. If the proposed conservatee *exhibits symptoms* of being "*gravely disabled*" or suffering from "*dementia*," however, the *loose standards* in the Probate Code allow courts to *remove* a person not "*gravely disabled*" or suffering from "*dementia*" to a residential "*care*" facility where they do not receive medical treatment (PC § 2352.5) under a "*preponderance of the evidence*" standard and without the testimony of a treating physician that *removal* is necessary or required. Despite the testimony of their treating physician that the Temporary Conservatee can receive the same "*care*" at home from non-skilled nursing assistants, court's err by relying on the loose standards in the Probate Code, refusing to defer to the medical opinion of the physician. (*Youngblood v. Romer* 457 U.S. 307, 322-323 n.30, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982) While Probate Code § 2257(a) requires the court to end the Temporary

Conservatorship 30 days after its appointment, Probate Code § 2257(b) allows a court's discretion to extend the appointment for any length. *A fortiori*, the PC § 2352.5 "*preponderance*" standard conflicts with the standards in LPS or PC §§ 1801, 1880 and 2356.5(b) proceedings.

In *Addington v. Texas*, 441 U.S. 418 at 426, the court stated, "We conclude that the individuals interest in the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the state to justify confinement by proof ***substantially more than a mere preponderance of the evidence***." *See also O'Connor v. Donaldson*, supra. Civil confinement in a Temporary Conservatorship, without treatment, will significantly impact one's "*liberty interest*" whether in an LPS proceeding or in a Probate Code §§ 1801, 1880, 2250, 2254 or PC 2356.5 proceeding.

And yet, in this Probate Code § 1880 proceeding and its temporary compliment under Probate Code § 2250.2, removal occurred under a mere "***preponderance of the evidence***" standard (Probate Code § 2352.5), from incompetent hearsay in an *Ex Parte* Petition on May 31, 2007, that Petitioner was too old and frail to care fo his wife. Hearsay, is hardly evidence "***clear and convincing***" or, substantially more than ***preponderance***. Despite the presumption that the personal residence of a proposed conservatee is the least restrictive appropriate place for the "*care*" of a conservatee (Probate Code § 2352.5(a)), under Probate Code § 2352.5(b), removal occurs as the presumption can be rebutted under a mere "***preponderance of the evidence***" standard. (Probate Code § 2352.5(a)) Such a loosely applied standard affronts the "*liberty interests*" of a

Probate Code § 2250 Temporary Conservatee and denies them due process. (*Addington v. Texas*, supra; *O'Conner v. Donaldson, supra*).

### 4. Petitioner's Application to Terminate the Temporary Conservatorship or Relocate Helen Wong back to her Residence

On June 22, 2007, Petitioner timely filed a demand for a Jury Trial and posted fees.

On June 27, 2007, Petitioner, through his attorney, requested of Eileen Wong, that Helen Wong be removed to a medical "*care*" facility, Tarzana Rehabilitation Center which has been steadfastly refused.

On July 16, 2007, Howard Meyers, filed his Report that alleged that Petitioner had no assistance in "*caring*" for Helen Wong in the family residence. That allegation was a major factor in filing the Petition as was a purported condition of the home. Dr. McClintick and a social worker allegedly informed him that it was dangerous to have no assistance in the home to help "*care* for Helen Wong and oversee the administration of her medication and, that she requires 24/7 "*care.*"

On July 20, 2007, Petitioner applied *Ex Parte* for an Order to Terminate the Temporary Conservatorship. Petitioner has standing under Probate Code §§ 1861(a)(3) and 1891(b)(3). Petitioner argued it was constitutionally impermissible to involuntarily confine Temporary Conservatee Helen Wong in a facility for alleged "*care*" when she was not receiving medical treatment at the facility and where none was available for her stroke disability relying on *O'Connor v. Donaldson, supra*, 42 U.S. 563.

In his declaration supporting the *Ex Parte* Application, Petitioner declared when his wife is returned to his "*custodial care*," he intends to have a Registered Nurse Assistant 4 hours a day and for as many additional four hour increments as are medically and, or, custodially necessary and required for the "*care*" of his wife.

Petitioner intended to cooperate with the conditions of Ms. MacCarley and Mr. Meyers, as expressed during the May 31, 2007 hearing.

During the July 20, 2007 hearing the court denied the request for a jury trial, set a November 6-8, 2007 bench trial and denied the relief requested in the *Ex Parte* Application. Petitioner is apprehensive that the trial court did not read or consider the *Ex Parte* Application as it had pre-determined the issues.[4]

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4. During the hearing the court stated:"One reason that I didn't read the *Ex Parte* Application is this morning we had about 80 or 90 matters on calendar and you just file it this morning. I will read it sometime today or Monday;" and "We don't need to argue this today. You are going to get an opportunity to have a hearing." During the hearing counsel inquired if the court wanted the parties to come back in the afternoon with respect to the *Ex Parte* if the court had enough time to read it today and, co-counsel stated, "The court said he would be reading it over the weekend," and the court responded immediately, "Yes. I intend to be gone this afternoon." Conspicuous by its immediate action, on July 20, 2007, the Respondent Court denied the Application, sua sponte, as evidenced by the minute order dated July 20, 2007 with a time notation of 10:00 a.m.. Said minute order evidences the fact that the court must have rendered its decision before leaving for lunch which was prepared by the Clerk immediately after lunch. The Court by its statements has provided evidence that it did not read or consider the *Ex Parte* Application.

Pre-judging the issues deprives the proceeding of impartiality and denies due process. *Marshall v. Jerrico*, 446 U.S. 238, 242, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980)

On August 2, 2007, the deposition of John McClintick, M.D. was taken and he testified that Helen Wong was not paralyzed, she was only restricted in the movement of her upper right extremity, her right arm. Dr. McClintick was the treating physician of both Petitioner and Helen Wong for the prior four years. During his deposition, Dr. McClintick testified that he examined Helen Wong on April 18, May 2, May 9, May 22 and June 9, 2007 and found certain deficiencies in the care Petitioner was providing Helen Wong. Dr. McClintick also testified that while Helen Wong needed 24/7 care, the remedy for the deficiencies in the care Petitioner was providing her was he needed help with a minimum of 8 hours *"custodial care"* a day from non-skilled nursing assistants and, Petitioner could provide the same level of *"care"* for Helen Wong the remainder of the sixteen (16) hours of daily time in their home. Dr. McClintick testified it was ***reasonable*** to return Helen Wong back to her residence where she could be re-assessed ten to fourteen days later and thereafter every thirty days.

On August 21, 2007, Petitioner applied *Ex Parte* again to Terminate the Temporary Conservatorship, or, in the alternative, relocate Helen Wong back to her home. The application was based on changed circumstances, alleging violations of Petitioner's and Helen Wong's right to privacy, that a defacto dissolution of his 58 year marriage from the burdens of the Temporary Conservatorship was occurring, violations of their rights

guaranteed by Article I, Section I and 7 of the California Constitution, the Unruh Civil Rights Act, Civil Code 51, et seq., and the testimony of Dr. McClintick. Petitioner had standing under Probate Code §§ 1881(a)(3) and 1891(a)(3).

On August 21, 2007, the Trial Court denied Petitioner's *Ex Parte* Application.

During the hearing the trial court concentrated on the deficiencies Dr. McClintick noted in his examination of Helen Wong on April 18, May 2, May 9, May 22 and June 9, 2007 rather than ever mentioning the remedy Dr. McClintick's medical testimony recommended: Helen Wong needed a minimum 8 hours of non-skilled nursing assistant "care" each day at home where Petitioner could provide Helen Wong with the same level of care each day for the remaining 16 hours. At the close of the hearing, the trail court commented, "A minimum 8 hours doesn't cut it."

### 5. Denial to Terminate the Temporary Conservatorship violated Due Process

Dr. McClintick was the professional and due process required the court to follow his recommendations. *(Richardson v. Perales*, 402 U.S. 389 at 404, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); *Youngblood v. Romer*, 457 U.S. 301, 322 323 [5]) The refusal of the court to accept the

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5. In determining what is "reasonable" in this and in any case presenting a claim for training by a State—we emphasize that courts must show deference to the judgment

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recommendations of Dr. McClintick[6] violated due process. and demonstrated judicial bias violating due process. (*Marshall v. Jerricho, supra*).

### 6. The Motion for Jury Trial

On August 8, 2007, Petitioner filed his Motion for a Jury Trial and on September 5, 2007, Eileen Wong filed an Opposition.

On September 18, 2007, the hearing on the Motion for a Jury Trial was heard and the Trial Court denied the Motion and re-set the trial for January 29, 2007.

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> exercised by a qualified professional . . . Moreover, there certainly is no reason to think judges or juries are better qualified than appropriate professionals in making such decisions . . . For these reasons, the decision, if made by a professional, is presumptively valid.

6. By "professional" decision maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long-term treatment decisions normally should be made by persons with degrees in medicine or nursing, or appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded.

*Youngblood*, 457 U.S. at 323 n.30.

## 7. Denying a Jury Trial Violated Due Process

A defendant in the conservatorship proceeding, who is a defacto conservatee by virtue of his estate and the community property estate being the subject of the conservatorship proceedings *IS ENTITLED TO A JURY TRIAL.*

Probate Code §1452 and §1863(a) are interpreted to read that only a conservatee has the right to demand a jury trial. Probate Code §§ 1000 and 1827 through California's Code of Civil Procedure § 631(a) and Article I, Section 7 and 16 of the California Constitution invoking the 14th Amendment of the United States Constitution are interpreted to protect one's common law right, one's "*liberty interests.*" Such authority substantiates that a defendant who is a defacto conservatee has the right to demand a jury trial in the Conservatorship proceeding. Whether Probate Code §§ 1452 and 1863(a) trump or are of lessor organic force than Article I, Section 7 and 16 of the California Constitution or the 5th and 14th Amendments of the United States Constitution are issues of urgent, constitutional importance.

*First*, Temporary Conservatee, Helen Wong had and has a constitutional right to a Jury trial under Probate Code 1452 and 1863(a) but her rights were not being safeguarded by PVP Counsel who did not demand a jury trial for her. It is intuitively recognizable that a Jury Trail would not prejudice the Temporary Conservatee, Helen Wong and, she has a fundamental right to a jury trial even if one is not being demanded for her. As Petitioner's filed Objections clearly enunciated his civil rights and the civil rights of his spouse of 58 years were

(and are) being violated, their civil rights must be accorded adequate protection with constitutional safeguards. Anything less subordinates the State and Federal Constitution to lessor organic state statutes in a loosely applied Probate Code.

It cannot be that Probate Code §§ 1452 and 1863(a) trump the provisions of Probate Code §§ 1000 and 1827 which invoke the protections of Article I, Section 7 and 16 of the California Constitution and the 14th Amendment of the United States Constitution.

*Second*, as Petitioner's estate is sought to be controlled by a court imposed Conservatorship, he is a defacto Conservatee and should be entitled to demand a jury trial under Probate Code §§ 1452 and 1863(a).

*Third*, since PVP Counsel refused to safeguard Helen Wong's constitutional rights and demand a jury trial for her at a time when her daughter, Temporary Conservator, Eileen Wong is attempting to gain access to her parents estate prior to their natural demise, Petitioner, a defacto Conservatee and the spouse of Temporary Conservatee Helen Wong for the prior 58 years should be able to make the demand for the jury trial for her under Probate Code §1452 and §1863(a).

*Fourth*, Petitioner is both a defacto Conservatee and an Objector, a defendant in this Conservatorship proceeding. (Probate Code §§ 1043 and 1044) His demand for a jury trial under Probate Code §§ 1000 and 1827 with Code of Civil Procedure § 631(a) which invokes Article I, Section 7 and 16 of the California Constitution guard his common law right, his "*liberty interest*," which should guarantee him a jury trial.

**8. Review of the Trial Court's Orders**

On September 21, 2007, Petitioner timely filed a Petition for a Writ of Mandate, or, In the Alternative, a Writ of Prohibition, or Certiorari, or Habeus Corpus, or other Appropriate Relief seeking to have the trial court's order which denied his *Ex Parte* Applications to terminate the Temporary Conservatorship vacated. The Writ was summarily denied in the California Court of Appeal, Second District Case No. B 202262 on September 25, 2007.

On October 5, 2007, Petitioner timely filed a Petition for Review in the California Supreme Court regarding the summary denial of the Writ, Case No. B 202262.

On November 8, 2007, Petitioner timely filed a Writ of Mandate to have the trial court's order which denied his Jury Trial Motion vacated, Appellate Court Case No. B203477. On November 28, 2007, the California Court of Appeal, Second District denied Petitioner's Petition for Writ of Mandate on the denial of his Jury Trial Motion.

On December 10, 2007, Petitioner timely filed a Petition for Review in the California Supreme Court regarding the summary denial of his Petition for Writ of Mandate for the Jury Trial in Case No. B203477.

On December 12, 2007, the California Supreme Court denied Petitioner's Petition for Review Case No. S157120, regarding the summary denial of the Petition for Writ of Mandate, or in the Alternative, a Writ of Prohibition, or Certiorari, or Habeus Corpus, or other

Appropriate Relief regarding the denial of his *Ex Parte* Applications to terminate the Temporary Conservatorship, Appellate Court Case No. B 202262.

On January 16, 2008, the California Supreme Court denied the Petition for Review Case No. S158944 regarding the summary denial of Petitioner's Writ of Mandate regarding the denial of his Jury Trial Motion, Case No. B203477.

**9. Further Violations of Due Process**

**(a) Denial of Visitation**

After the Temporary Conservatorship was established on May 31, 2007, Petitioner filed applications to terminate the Temporary Conservatorship which were denied as were the concomitant Writs and Petitions for Review thereon. Subsequently, during the pendency of the proceedings, Petitioner sought at least to begin to reunite his private relationship with his wife and filed a Motion for Unfettered, Frequent and Continuing Visitation with his Spouse outside the facility of Flair Manor where she is unconstitutionally confined against her will. Petitioner's motion was denied. The trial court instead noted it would sign an order for monitored visitation where Petitioner could not drive his spouse despite his vlid DMV license.

**(b) Refusal to Present a Plan**

*First*, no plan has ever been made by the Temporary Conservator or the Respondent Court to return Helen Wong to her personal residence. *Second*, the Respondent

Court has never articulated in precise *"findings"* that Petitioner lacks capacity to be Helen Wong's primary *"care giver." Third*, PVP Counsel and the Temporary Conservator continued to argue the Wong residence was not safe and secure for Helen Wong. When Petitioner requested clarification and detail as to precisely what repairs or renovations are required so that his wife can be returned home, PVP Counsel and the Temporary Conservator refused specificity but continued to decry the home was not safe and secure. On January 31, 2008, while PVP Counsel finally provided a partial list, the Temporary Conservator refused to accept the detail in the list as the necessary requirements.

Probate Code § 2352.5(b) required the Court or the Temporary Conservator to determine the appropriate level of care and whether the personal residence of Helen Wong was an appropriate place for such care. If not, *a plan to return the Conservatee to his or her personal residence* or a written explanation of the restriction on returning the Conservatee to their personal residence by the Conservator, signed under penalty of perjury. and submitted to the court within 60 days of appointment as Conservator is required. If the place of residence is unfit for habitation [PC § 2254(a)] while removal may be proper, subject to PC § 2252(e), the Court must also order the Temporary Conservator to take all reasonable steps to preserve the status quo concerning the Conservatee's previous place of residence. [PC § 2253(h)] Since a Temporary Conservator has the powers and duties under PC § 2252(b) as specified under PC § 2354 (medical treatment), despite PC § 2252(e), the Temporary Conservator should and must, under PC § 2580 through PC § 2252(c), effectuate the required plan under

PC 2352.5(b)(1)(2), for returning the Temporary Conservatee to their residence as soon as practical since removal appears to have occurred under PC 2253(a)] The refusal to do so violates due process.

**(c) Petitioner as Temporary Conservator**

On November 7, 2007, neurologist Greg Whitman, M.D., examined Petitioner and Helen Wong. On November 14, 2007, Dr. Whitman prepared medical reports regarding his examination stating Petitioner has the capacity to be the primary "*care giver*" of Helen Wong. Regarding his examination of Helen Wong, Dr. Whitman declared that the patient presented to him for examination in November, 2007, Helen Wong, the stroke victim, was significantly more advanced than the patient presented to the treating physician as reflected in the Capacity Declaration dated May 16, 2007 and Helen Wong has cognitive reasoning, responds to commands, understands questions and has communication skills through gestures.

On December 12, 2007, Petitioner filed a Motion to Dismiss the Conservatorship Proceedings, or, in the Alternative to Remove Eileen Wong as the Temporary Conservator and appoint him as the Temporary Conservator under the priority of Probate Code 1812.

The trial court would not allow Helen Wong to be present at the hearing and denied the motion. Petitioner was adamant that the Respondent Court bludgeoned him and his wife, Temporary Conservatee, Helen Wong, in a cruel and unusual way because although he is willing to accept the recommendation of his and the Temporary

Conservatee's treating physician and will cooperate with having a "*care*" giver for his wife and his home, the court would only comment that *"I'd be very uncomfortable appointing Mr. Wong based upon what I know at this time*." Petitioner is equally adamant that the Respondent Court's apparent indifference to his pleas for relief are because the court appears to consider him *different, physically unattractive, socially unacceptable which precipitated its, judicial-public unease,* a violation of "*due process*" under *O'Connor v. Donaldson, supra,* 422 U.S. 563 at 575; *Addington v. Texas, supra,* 441 U.S. 418 at 426-427.

Petitioner maintains that he and Temporary Conservatee Helen Wong along with thousands of other elderly disabled Californians are subjected to similar invidious, class based discriminatory bias from elder abuse, and locked into a system which eviscerates their constitutional rights and sanctions a form of legalized kidnapping which, in effect, creates a de facto dissolution of marriage subjecting their estates to the designs of others.

## REASONS FOR GRANTING THE PETITION

### A. Expounder of Federal Law

The Supreme Court is the national expounder of due process and through certiorari, the court manages its dockett in which it chooses the cases it will hear. *O'Conner v. Donaldson, supra; Addington v. Texas, supra.*

### B. Certiorari Granted if Case is Special and Important

The phrase "Special and Important" reasons was defined in *Rice v. Sioux City Memorial Park Cemetasry, Inc.* 349 U.S. 70, 74, 75 S. Ct. 614, 99 L. Ed. 897 (1955).[7] Thus, the lack of a snug fit into a Rule 10 category is not controlling. (*Addington v. Texas, supra,* 441 U.S. 418, 425) In *Addington,* certiorari was granted to determine when the parameters of a civil commitment create a significant deprivation of liberty and where certiorari was granted because of an admitted conflict between a lower court and the Court of Queens Bench.

Analogous to *Rice* and *Addington,* the within petition concerns "special and important" state and national procedural issues regarding the requirements for appointment of a conservatorship and the standards for removal from one's residence on the one hand and the deprivation of ones liberty on the other hand. As noted in *Addington,* individuals facing commitment are entitled to due process of law before they can be committed.

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7. "Special and Important reasons imply a reach to a problem beyond the academic and episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the court's duty to avoid decision of constitutional issues unless avoidance becomes evasion."

### C. Certiorari is Propser when the Decisions of the State Courts Implicates The Decisions Of The Supreme Court In Other Cases

Under the seminal case of *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), certiorari was proper to develop standards required for civil commitment and how to determine what is fair in a given context rather than risk a deprivation of liberty. Thus, certiorari is proper as no where in the lower court rulings was there a discussion to balance (1) the private interests affected, (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional safeguards and (3) the government interest and burdens of additional procedures. *(Mathews*, 424 U.S. at 334-335)

While the lower court only relied on incompetent hearsay to appoint the Temporary Conservator and order the removal, it refused to consider Petitioner's competent, substantial medical evidence which went uncontroverted and was sufficient to relocate Helen Wong back to her home and, or to terminate the Temporary Conservatorship or appoint Petitioner as the Temporary Conservator. Although Petitioner was given a hearing during the time he filed his applications and motions, considering the substantial and uncontroverted medical evidence of his capacity, the hearings, in context, were not meaningful and thus not fair in the meaning of due process. (*O'Conner v. Donaldson, supra*; *Addington v. Texas*, supra; *Mathews v. Eldridge, supra*; *Youngblood v. Romer, supra; Richardson v. Perales*).

**D. Boundaries of Jurisdiction**

When the lower court appointed the Temporary Conservatorship, ordered the removal and denied Petitioner a jury trial which the California Second District Court of Appeal and the California Supreme Court refused to vacate, the due process question Petitioner raised implicated prior decisions of the United States Supreme Court and, certiorari is proper. (*Addington v. Texas*, supra, *Mathews v. Eldridge, supra*; *O'Conner v. Donaldson, supra*).

**E. Importance of Question Presented**

If a question is implicitly important, there may not be cited authority directly on point. Petitioner argues that it is the importance of the questions itself not whether they make a tidy fit into a category of the Supreme Court Rule 10. While the analogous *Addington* enunciated principles that civil commitments are a deprivation of liberty and Matthews outlined a test to balance whether one was given due process, the context in the within matter is more closely related to the facts cited in *O'Conner v. Donaldson, supra.* While *O'Conner* offers needed guidance, the important questions in the within matter touch, but reach beyond *O'conner.* For example, in *O'Conner*, the opinion articulated a due process standard stating a state cannot constitutionally confine, without more, a non dangerous individual who is capable of surviving safely in freedom by himself, or with the help of a wiling and responsible family member or friend. (*O'Conner*, 422 U.S. 563 at 576 (emphasis added)) While Helen Wong needed care 24/7, Petitioner, her husband of 58 years was the responsible family

member willingly available to provide for his wife and he was deemed medically capable of doing so by two physicians. The trial court was bound to rely on the opinion of the physicians but did not do so violating due process. (*Youngblood v. Romer, supra*) In *O'Conner*, however, the Supreme Court did not decide whether, when or by what procedures a civil confinement could occur and the Mathews balancing standard does not account for civil commitments in a conservatorship proceeding. Thus, the questions the Petitioner asks the court to review are "special and important" not only to Petitioner but to every disabled elderly person in the several states. The deprivation of one's "*liberty interest*" which will occur if standards regarding whether, when and by what procedures a civil confinement can occur in a conservatorship proceeding, are substantial and urgently important.

**F. Important Unsettled Questions**

If certiorari is not granted, judicial guidelines of whether, when or by what procedures civil confinements can occur in Conservatorship proceeding will be absent as the *Mathews* balancing standard does not account for civil commitments in a Conservatorship. Left without judicial guidelines, tens of thousands of elderly disabled persons will suffer the same deprivations of their "liberty interests" as Petitioner and his wife have suffered in this case from those seeking access to the estates prior to their demise.

## G. There Was No Reasonable Finding To Support the Civil Comitttment

In similar cases, certiorari was granted when civil commitment was devoid of evidentiary support, rendering a confinement unconstitutional under the due process clause of the 14th amendment. (*Mathews v. Eldridge, supra; O'Conner v. Donaldson, supra; Statosky v. Kramer*, 455 U.S. 745, 755-756, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)[8]) In this matter, the lower court

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8. The minimum requirements [of procedural due process] being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action. *Vitek v. Jones, 445 U.S. 480, 491, 100 S.Ct. 1254, 1262, 63 L.Ed.2d 552 (1980)*. See also *Logan v. Zimmerman Brush Co., 455 U.S. 422, 432, 102 S.Ct. 1148, 1155-1156, 71 L.Ed.2d 265 (1982)*. Moreover, the degree of proof required in a particular type of proceeding is the kind of question which has traditionally been left to the judiciary to resolve. *Woodby v. INS*, 385 U.S. 276, 284, 87 S.Ct. 483, 487, 17 L.Ed.2d 362 (1966).*FN8* In cases involving individual rights, whether criminal or civil, [t]he standard of proof [at a minimum] reflects the value society places on individual liberty. *Addington v. Texas, 441 U.S., at 425, 99 S.Ct., at 1809*, quoting *Tippett v. Maryland, 436 F.2d 1153, 1166 (CA4 1971)* (opinion concurring in part and dissenting in part), cert. dism'd *sub nom. Murel v. Baltimore City Criminal Court, 407 U.S. 355, 92 S.Ct. 2091, 32 L.Ed.2d 791 (1972)*."This

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was given no more than incompetent hearsay and did not accept the Petitioner's substantial evidence. The arguments of the Temporary Conservator and PVP Counsel affirmed by the lower court which California's Second District Court of Appeal and Supreme Court refused to vacate violated due process.

## H. Certiorari is Proper When A Court Has So Far Departed From The Accepted and Usual Course of Judicial Proceedings Or Sanctioned A Departure By The Lower Court As To Call For An Exercise Of The Supervisory Power of the Supreme Court

The case Petitioner filed in the lower court, demonstrated a clear, valid and meritorious case. The entirety of the lower court record was re-filed in the

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> Court has mandated an intermediate standard of proof- clear and convincing evidence -when the individual interests at stake in a state proceeding are both particularly important and more substantial than mere loss of money. *Addington v. Texas, 441 U.S., at 424, 99 S.Ct., at 1808.* Notwithstanding the state's civil labels and good intentions, *id., at 427, 99 S.Ct. at 1810,* quoting *In re Winship, 397 U.S., at 365-366, 90 S.Ct., at 1073-1074,* the Court has deemed this level of certainty necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with a significant deprivation of liberty or stigma. *441 U.S., at 425, 426, 99 S.Ct., at 1808, 1809.* See, *e. g., Addington v. Texas, supra* (civil commitment).

California Second District Court of Appeal and was then sent to the California Supreme Court. Some of the arguments and cited authority are noted above. When the California Second District Court of Appeal and the California Supreme Court refused to vacate the lower court's decisions, the decisions were a severe departure from the accepted and usual course of judicial proceedings as its decision sanctioned a departure of such by the lower court. Thus, a grant of certiorari is proper.

## CONCLUSION

Petitioner respectfully requests that the United States Supreme Court grant his Petition for Writ of Certiorari.

Respectfully submitted,

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